

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY KAY KLAUSMEYER

Claimant

VS.

PADGETT ENTERPRISES, INC.

Respondent

AND

NATIONWIDE MUTUAL INSURANCE COMPANY

Insurance Carrier

Docket No. 1,023,549

ORDER

Claimant appeals the March 9, 2007 Post Award Medical Order of Administrative Law Judge John D. Clark. In the Post Award Medical Order, the Administrative Law Judge (ALJ) ordered that Robert L. Eyster, M.D., remain as claimant's authorized treating physician.

This is the third time this matter has been brought before the Board. A preliminary hearing Order from the ALJ dated July 14, 2005, awarded claimant benefits after the ALJ determined that claimant had suffered an injury arising out of and in the course of her employment. That preliminary hearing Order was affirmed by one Board Member in an Order dated August 29, 2005.

The matter then went to regular hearing on August 21, 2006, and the ALJ, in an Award dated December 6, 2006, again found claimant's injuries compensable. Respondent appealed the Award to the entire Board, which, in its Order of March 15, 2007, reversed the ALJ, finding that claimant had failed to prove her injuries arose out of and in the course of her employment with respondent.¹

While the parties were awaiting the Board's decision on the appeal from the final Award, claimant underwent surgery on her hip on December 21, 2006, with Bruce R. Buhr, M.D., as the surgeon. Claimant also filed an Application for Post Award Medical on December 14, 2006, with the hearing scheduled for January 11, 2007. It is from that hearing that the ALJ issued the Order herein appealed.

¹ An appeal of this Board Order was filed with the Kansas Court of Appeals and docketed on March 27, 2007. No decision has been rendered from that appeal.

ISSUES

Claimant argues that the ALJ erred in failing to grant claimant's request for a change of treating physician, in failing to award payment of the medical expenses associated with the surgery and in failing to make findings of fact in the Post Award Medical Order.

Respondent continues to dispute the compensability of this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board concludes the Post Award Medical Order should be reversed. The Board, in its Order of March 15, 2007, found that claimant had failed to prove her injuries arose out of and in the course of her employment. While that Order has been appealed to the Kansas Court of Appeals, no ruling from that appellate body has been issued. Therefore, the Board's determination that claimant has failed to prove her injuries arose out of and in the course of her employment, although not final, remains as the law of the case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Post Award Medical Order of Administrative Law Judge John D. Clark dated March 9, 2007, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of May, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge